

## Calendar No. 645

115TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
115-358

### NEW MEXICO DROUGHT PREPAREDNESS ACT OF 2018

NOVEMBER 14, 2018.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 1012]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1012) to provide for drought preparedness measures in the State of New Mexico, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “New Mexico Drought Preparedness Act of 2018”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.  
Sec. 3. Water acquisition program.  
Sec. 4. Water conservation.  
Sec. 5. National Academy of Sciences study.  
Sec. 6. Emergency funding.  
Sec. 7. Secure Water Act grants and cooperative agreements.  
Sec. 8. Rio Grande Pueblo irrigation infrastructure reauthorization.  
Sec. 9. Effect on existing law.

#### SEC. 2. DEFINITIONS.

Except as otherwise provided in this Act, in this Act:

(1) BASIN.—The term “Basin”—

(A) is limited to areas within the State of New Mexico; and

(B) means each of—

- (i) the Upper Rio Grande Basin;
- (ii) the Middle Rio Grande Basin;
- (iii) the Lower Rio Grande Basin;
- (iv) the Lower Pecos River Basin;
- (v) the Gila River Basin;

- (vi) the Canadian River Basin;
- (vii) the San Francisco River Basin; and
- (viii) the San Juan River Basin.
- (2) DISTRICT.—The term “District” means the Middle Rio Grande Conservancy District.
- (3) PUEBLO.—The term “Pueblo” means each of the following pueblos in the State:
  - (A) COCHITI.
  - (B) SANTO DOMINGO.
  - (C) SAN FELIPE.
  - (D) SANTA ANA.
  - (E) SANDIA.
  - (F) ISLETA.
- (4) RIO GRANDE COMPACT.—The term “Rio Grande Compact” means the compact approved by Congress under the Act of May 31, 1939 (53 Stat. 785, chapter 155).
- (5) SECRETARIES.—The term “Secretaries” means—
  - (A) the Administrator of the Environmental Protection Agency;
  - (B) the Secretary of Commerce; and
  - (C) the Secretary of the Interior.
- (6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (7) STATE.—The term “State” means the State of New Mexico.

### SEC. 3. WATER ACQUISITION PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall carry out in the Basins a water acquisition program in coordination with the other appropriate Federal agencies, State agencies, and non-Federal stakeholders, under which the Secretary shall—

- (1) make acquisitions of water in the Basins by lease or purchase of water rights or contractual entitlements from willing lessors or sellers, consistent with section 8 of the Act of June 17, 1902 (43 U.S.C. 383), the Rio Grande Compact, and applicable State law relating to the acquisition and administration of water rights; and
- (2) take any other actions, consistent with section 8 of the Act of June 17, 1902 (43 U.S.C. 383), the Rio Grande Compact, and applicable State law, that the Secretary determines would achieve the purposes of the water acquisition program described in subsection (b).
- (b) PURPOSES.—The purposes of the water acquisition program are—
  - (1) to enhance stream flow to benefit fish and wildlife (including endangered species), water quality, and river ecosystem restoration in the Basins; and
  - (2) to enhance stewardship and conservation of working land, water, and watersheds in the Basins, consistent with the purpose described in paragraph (1).
- (c) COORDINATION.—To assist in developing and administering the program, the Secretary may provide funds to a federally established nonprofit entity with particular expertise in western water transactions.
- (d) DISTRICT PROJECTS.—Subject to the Rio Grande Compact and applicable State law, the Secretary may develop programs to provide—
  - (1) cost-share assistance to the District or agricultural producers and irrigators in the District for making irrigation system improvements and increase system efficiency;
  - (2) incentives to the District for the establishment of a water leasing program from willing lessors for agricultural producers and irrigators in the District to temporarily lease pre-1907 water rights (instead of permanent severance from irrigable lands) for the purpose of providing benefits to species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other river ecosystem benefits; and
  - (3) cost-share assistance to the District to implement infrastructure or operational changes that will allow for effective management of a leasing program, while maintaining adequate water deliveries to other agricultural producers and irrigators.

### SEC. 4. WATER CONSERVATION.

(a) IN GENERAL.—The Secretary, in cooperation with the District and in consultation with the Pueblos, may provide funding and technical assistance for the installation of metering and measurement devices and the construction of check structures on irrigation diversions, canals, laterals, ditches, and drains—

- (1) to ensure the conservation and efficient use of water within the District by—
  - (A) reducing actual consumptive use; or
  - (B) not increasing the use of water; and

(2) to improve the measurement and allocation of water acquired through the water acquisition program established under section 3.

(b) RIO GRANDE, SAN ACACIA AND ISLETA REACHES.—

(1) IN GENERAL.—The Secretary shall provide for development of a comprehensive plan for the San Acacia and Isleta reaches to plan, design, construct and prioritize projects that balance river maintenance, water availability, use, and delivery, and ecosystem benefits, including—

(A) planning, permitting, and construction of a pumping station at Bosque del Apache National Wildlife Refuge for the purpose of more efficiently using water to provide—

(i) a stable supply for the Refuge; and

(ii) an efficient and reliable supply of water to the Rio Grande for the benefit of the endangered silvery minnow and Southwestern willow flycatcher;

(B) planning, permitting, and construction of a river channel realignment project near the Rio Grande mile-83 for the purpose addressing river channel aggradation while maintaining floodplain connectivity;

(C) planning, permitting, and construction of a controlled outlet for the low flow conveyance channel to the Rio Grande between Fort Craig, New Mexico and Rio Grande mile-60 for the purpose of water use and delivery, enhancement and development of habitat areas, and possible creation of a single-channel river ecosystem; and

(D) development of a Lower Reach Plan—

(i) to identify additional projects and maintenance activities with water use, sediment management, and delivery and ecosystem benefits; and

(ii) to prioritize implementation of all projects and activities.

(2) PUBLIC PARTICIPATION.—In carrying out this subsection, the Secretary shall provide a process for public participation and comment during plan development and alternative analysis.

#### SEC. 5. NATIONAL ACADEMY OF SCIENCES STUDY.

(a) DEFINITION OF BASIN.—

(1) IN GENERAL.—In this section, the term “basin” means the Rio Grande and the tributaries of the Rio Grande between—

(A) the headwaters of the Rio Grande and the Rio Chama in the State of Colorado; and

(B) Elephant Butte Reservoir in the State.

(2) EXCLUSIONS.—In this section, the term “basin” does not include Elephant Butte Reservoir, Caballo Dam, or any portion of the Rio Grande or the tributaries of the Rio Grande downstream of Elephant Butte Reservoir.

(b) STUDY.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Army and the Secretary shall enter into an arrangement with the National Academy of Sciences to carry out a study on water and reservoir management and operation issues in the basin (including the Heron, El Vado, Abiquiu, Cochiti, and Jemez Canyon Dams and Reservoirs), which shall include—

(1) an evaluation of existing basin reservoir authorizations and legal requirements;

(2) a summary of—

(A) the physical-hydrologic understanding of existing basin reservoir operations; and

(B) any potential constraints on basin reservoirs in light of climate change projections;

(3) an identification of opportunities to optimize water storage and management to benefit the basin ecosystem, irrigators and municipal users, and to promote water conservation through reauthorization of, reoperation of, regulation of, or physical improvements to the reservoirs;

(4) an evaluation of the physical-hydrologic feasibility of the identified future basin reservoir management scenarios;

(5) an identification of water use, supply, and accounting impacts to other stakeholders in the State;

(6) consideration of operations such as—

(A) the storage of supplemental water acquired by and under the control of the Bureau of Reclamation;

(B) the carryover storage of San Juan-Chama Project contract water;

(C) the Pueblo Prior and Paramount operation water;

(D) changes in timing of water released to offset municipal pumping;

(E) changes in the timing of storage and release of floodwaters;

(F) the reduction of evaporative losses from basin reservoirs;

(G) conservation of water resulting from irrigation operation changes by non-Indian and Pueblo irrigators;

(H) the impacts of management and operations on recreation and hydro-power;

(I) the impacts of management and operations on the basin ecosystem and the habitats that support species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(J) any other factors the Academy determines to be necessary for purposes of fully evaluating opportunities to achieve greater water conservation, drought resiliency, and ecological health in the basin; and

(7) recommendations for future management scenarios and measures that Congress could take with respect to the basin, consistent with all applicable law, including the Act of June 17, 1902 (43 U.S.C. 383), and the Rio Grande Compact to assist the agencies in establishing more flexible operating procedures to improve the performance of basin reservoir operations in accommodating multiple purposes.

(c) COORDINATION WITH OTHER STUDIES.—To the maximum extent practicable, the study carried out under subsection (b) shall be coordinated with, and use data collected and analyses conducted for, other studies of the basin, including the Bureau of Reclamation Rio Grande Basin Study initiated in 2017.

(d) COSPONSORS.—The Secretary of the Army and the Secretary shall solicit cosponsors to contribute not less than 50 percent of the costs of the study under subsection (b), as appropriate, including State or private organizations.

(e) PUBLIC AVAILABILITY OF STUDY.—On the date on which the National Academy of Sciences completes the study under this section, the National Academy of Sciences shall make available to the public the results of the study.

(f) REPORT.—Not later than 2 years after the date of enactment of this Act, the National Academy of Sciences shall submit to the Secretary of the Army and the Secretary a report that contains a summary of the results of the study conducted under this section.

#### SEC. 6. EMERGENCY FUNDING.

##### (a) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Financial assistance may be made available under the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2201 et seq.) for eligible water projects to assist Western States and Tribal governments to address drought-related impacts to water supplies or any other immediate water-related crisis or conflict.

(2) ADDITIONAL AVAILABILITY.—Financial assistance may be made available under this section to organizations and entities with water delivery authority that are engaged in collaborative processes to restore the environment or are part of a basin-wide solution for restoration.

(b) TYPES OF ASSISTANCE.—Assistance under subsection (a) may include a range of projects, including—

(1) the installation of pumps, temporary barriers, or operable gates for water diversion and fish protection;

(2) the installation of drought-relief groundwater wells for Indian Tribes and in wildlife refuges and other areas;

(3) the acquisition or assistance in the acquisition of water from willing sellers to enhance stream flow for the benefit of fish and wildlife (including endangered species), water quality, river ecosystem restoration, and other beneficial purposes, to be carried out in accordance with the water acquisition program established under section 3;

(4) agricultural and urban conservation and efficiency projects;

(5) exchanges with any water district willing to provide water to meet the emergency water needs of other water districts in return for the delivery of equivalent quantities of water later that year or in future years;

(6) maintenance of cover crops to prevent public health impacts from severe dust storms;

(7) emergency pumping projects for critical health and safety purposes;

(8) activities to reduce water demand consistent with a comprehensive program for environmental restoration and settlement of water rights claims;

(9) the use of new or innovative on-farm water conservation technologies or methods that may—

(A) assist in sustaining permanent crops in areas with severe water shortages; and

(B) make water available for other beneficial uses;

(10) activities that protect, restore, or enhance fish and wildlife habitat or otherwise improve environmental conditions, including water quantity or quality concerns and improved fish passage;

(11) activities reducing or preventing groundwater depletion or promoting groundwater recharge;

(12) technical assistance to improve existing irrigation practices to provide water supply benefits;

(13) the investigation of, and pilot projects for, brackish water development and aquifer storage and recovery;

(14) the lining of irrigation ditches and canals to reduce water loss and improve efficiency;

(15) assistance to municipal water management entities for water supply planning in preparation for and in response to dry, critically dry, and below normal water years, including—

(A) hydrological forecasting;

(B) identification of alternative water supply sources; and

(C) guidance on potential water transfer partners; and

(16) any other assistance the Secretary determines to be necessary to increase available water supplies, maintain the health of river ecosystems, or mitigate drought impacts.

#### **SEC. 7. SECURE WATER ACT GRANTS AND COOPERATIVE AGREEMENTS.**

Section 9504(a)(1)(H) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a)(1)(H)) is amended—

(1) in clause (i), by striking “or” at the end;

(2) in clause (ii), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(iii) to plan for or address the impacts of drought.”.

#### **SEC. 8. RIO GRANDE PUEBLO IRRIGATION INFRASTRUCTURE REAUTHORIZATION.**

Section 9106 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1304) is amended—

(1) in subsection (c)(4), by striking “2 years after the date of enactment of this Act” and inserting “December 31, 2019”; and

(2) in subsection (g)(2), by striking “2010 through 2019” and inserting “2018 through 2026”.

#### **SEC. 9. EFFECT ON EXISTING LAW.**

(a) **IN GENERAL.**—An action taken by any of the Secretaries or another entity under this Act or an amendment made by this Act shall comply with applicable State laws in effect on the date of enactment of this Act, including a law described in subsection (b).

(b) **STATE LAW.**—Nothing in this Act or an amendment made by this Act affects, is intended to affect, or interferes with a law of the State relating to the control, appropriation, use, or distribution of water, or any vested right acquired under the law.

(c) **RIO GRANDE COMPACT.**—Nothing in this Act or an amendment made by this Act affects or is intended to affect or interfere with any obligation of a State under the Rio Grande Compact or any litigation related to the Rio Grande Compact.

### **PURPOSE**

The purpose of S. 1012 is to provide for drought preparedness measures in the State of New Mexico.

### **BACKGROUND AND NEED**

New Mexico has faced a number of droughts in recent years and several studies indicate that future water supplies will not meet the State’s expected demands. In 2012, a variety of stakeholders from around New Mexico, including conservancy districts, farmers, ranchers, municipalities, and others, gathered for a water conference in Las Cruces, New Mexico, to develop proposals to help the State deal with future water supply challenges.

The stakeholder conference produced a report containing roughly 50 policy recommendations covering a wide variety of water management issues, ranging from conservation and research priorities

to infrastructure operation and maintenance, technology, and planning.

S. 1012 authorizes the Secretary of the Interior (Secretary) to implement several of the conference report's recommendations, along with other recommendations developed through continued outreach with stakeholders, to address long-term water solutions in the state.

#### LEGISLATIVE HISTORY

S. 1012 was introduced by Senators Udall and Heinrich on May 2, 2017. The Subcommittee on Water and Power held a hearing on the bill on June 14, 2017.

In the 114th Congress, Senator Udall introduced a similar measure, S. 1936, on August 4, 2015. The Subcommittee on Water and Power held a hearing on S. 1936 on October 8, 2015.

The Senate Committee on Energy and Natural Resources met in an open business session on October 2, 2018, and ordered S. 1012 favorably reported, as amended.

#### COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1012, if amended as described herein. Senators Lee and Risch asked to be recorded as voting no.

#### COMMITTEE AMENDMENT

During its consideration of S. 1012, the Committee adopted an amendment in the nature of a substitute. The substitute amendment deleted sections 5, 9, 11, and 12 and reformatted the bill accordingly. Several of these provisions were enacted as part of the America's Water Infrastructure Act (Public Law 115–270), and are no longer necessary in S. 1012. In addition, the amendment added a requirement that the authorized National Academy of Sciences (NAS) study coordinate with other basin-related studies and directed the Secretary and the Secretary of the Army (Secretaries) to solicit non-Federal contributions of at least 50 percent of the study's costs. Additionally, the substitute amendment removed a provision related to Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), prohibited the Commissioner of the Bureau of Reclamation (Reclamation) from waiving the non-Federal cost share for Secure Water Act grants (42 U.S.C. 10364(a)(3)(E)), and made other minor changes. The substitute amendment is further described in the section-by-section analysis.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title; table of contents*

Section 1 sets forth the short title and table of contents.

##### *Sec. 2. Definitions*

Section 2 defines key terms.

### *Sec. 3. Water acquisition program*

Subsection (a) directs the Secretary, acting through the Commission of Reclamation and in cooperation with Federal, State, and other stakeholders, to carry out a water acquisition program in specified basins in New Mexico, under which the Secretary is: (1) to make acquisitions of water by lease or sale from willing lessors or sellers; and (2) to take any other actions that the Secretary determines would enhance the program's purposes.

Subsection (b) sets forth the following purposes of the program: (1) to enhance stream flow to benefit fish and wildlife, water quality, river ecosystem restoration; and (2) to enhance stewardship and conservation of working land, water, and watersheds.

Subsection (c) authorizes the Secretary to provide funds to a Federally established nonprofit entity, with expertise in western water transactions, in order to assist in developing and administering the program.

Subsection (d) authorizes the Secretary to develop programs to provide cost-share assistance to the Middle Rio Grande Conservancy District (District) or agriculture producers and irrigators, for irrigation system improvements and increased efficiency; incentives to the District for a water leasing program for the benefit of species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and other river ecosystem benefits; and cost-share assistance to the District to implement infrastructure or operational changes.

### *Sec. 4. Water conservation*

Subsection (a) authorizes the Secretary, in cooperation with the District, and in consultation with the Pueblos, to provide funding and technical assistance for the installation of metering and measurement devices and the construction of check structures on irrigation diversions, canals, laterals, ditches, and drains: (1) to ensure the conservation and efficient use of water within the District, and (2) to improve the measurement and allocation of water acquired through the water acquisition program.

Subsection (b) directs the Secretary to provide for development of a comprehensive plan to plan, design, construct, and prioritize projects that balance river maintenance, water availability, use, and delivery, and ecosystem benefits for the San Acacia and Isleta reaches of the Rio Grande. This subsection further requires the Secretary to provide for public participation and comments during the plan development and alternative analysis.

### *Sec. 5. National Academy of Sciences study*

Subsection (a) defines "basin" for section 5.

Subsection (b) requires the Secretaries to enter into an arrangement with the NAS, within 60 days of enactment, to study water and reservoir management and operation issues in the basin. This subsection further specifies the issues the study must address.

Subsection (c) requires the study to be coordinated with and use data and analysis from other basin-related studies, including Reclamation's 2017 Rio Grande Basin Study.

Subsection (d) requires the Secretaries to solicit cosponsors, including State and private organizations, to contribute at least 50 percent of the study's costs.

Subsection (e) directs the NAS to make the study results publicly available.

Subsection (f) directs the NAS to submit the study to the Secretaries within two years of the Act's enactment.

*Sec. 6. Emergency funding*

Subsection (a) authorizes financial assistance pursuant to the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2201 et seq.) for eligible projects to assist Western States and Tribal governments with drought-related impacts to water supplies or any other immediate water-related crisis or conflict. This subsection further authorizes such financial assistance to organizations and entities with water delivery authority that are engaged in collaborative processes to restore the environment or are part of a basin-wide water solution.

Subsection (b) authorizes a range of projects for which financial assistance may be provided, including 16 specified project types.

*Sec. 7. Secure Water Act grants and cooperative agreements*

Section 7 amends section 9504(a)(1)(H) of the Omnibus Public Lands Management Act of 2009 (42 U.S.C. 10364(a)(1)(H)) to add planning and addressing drought impacts as an eligible use of Bureau of Reclamation Secure Water Act grants and cooperative agreements.

*Sec. 8. Rio Grande Pueblo irrigation infrastructure reauthorization*

Section 8 requires the Secretary to submit a report to the Senate Energy and Natural Resources Committee and the House Natural Resources Committee with a recommended list of projects recommended for implementation, along with findings, by December 31, 2019. This section further reauthorizes appropriations for Rio Grande Pueblo irrigation infrastructure grants through Fiscal Year 2026.

*Sec. 9. Effect on Existing Law*

Section 9 requires any action taken under the Act to comply with applicable State laws. This section also makes clear that nothing in the Act affects or interferes with State control, appropriation, use or distribution of water, or any vested right. This section further specifies that nothing in the Act affects or interferes with any State obligation under the Rio Grande Compact 53 Stat. 785, chapter 155) or related litigation.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

Summary: S. 1012 would extend the authority of the Bureau of Reclamation (BOR) to provide grants to Pueblo Indian Tribes to repair and replace irrigation infrastructure in New Mexico. The bill also would direct BOR to contract with the National Academy of Sciences (NAS) to study the management and consumption of water in the Rio Grande Basin. Finally, S. 1012 would authorize BOR to assist irrigation districts and water utilities in the state with projects designed to conserve water and to coordinate the acquisition of water from willing sellers. Using information from



BOR, CBO estimates that implementing the bill would cost \$22 million over the 2019–2023 period, assuming appropriation of the authorized and necessary amounts.

Enacting S. 1012 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1012 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1012 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1012 is shown in the following table. The costs of the legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level .....	1	6	6	6	6	25
Estimated Outlays .....	1	4	5	6	6	22

Basis of estimate: For this estimate, CBO assumes that S. 1012 will be enacted in 2019 and that the authorized and necessary amounts will be appropriated for each year. Estimated outlays are based on historical spending patterns for similar programs.

Under current law, BOR's authority to provide grants to Pueblo Indian Tribes to repair and replace irrigation infrastructure expires in 2019. About \$3 million has been expended for the program since 2013. S. 1012 would authorize the appropriation of \$6 million annually through 2026 for the grants. CBO estimates that implementing this provision would cost \$21 million over the 2019–2023 period and \$21 million after 2023.

S. 1012 would direct BOR to contract with NAS to study water management and consumption in the basin, identify potential effects of climate change, and recommend methods to enhance drought resiliency and protect the ecosystems and habitats of endangered species. CBO estimates that completing the study would cost \$1 million in 2019.

Finally, S. 1012 would authorize BOR to assist irrigation districts and water utilities in the state with projects aimed to conserve water, coordinate water acquisitions from willing sellers, and construct infrastructure to secure water supplies during periods of drought. Under current law, BOR is authorized to carry out those activities under existing programs and will continue to provide such assistance. Therefore, CBO estimates that implementing those provisions would not affect the federal budget.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 1012 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: S. 1012 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Aurora Swanson; Mandates: Zachary Byrum.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1012. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1012, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1012, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the June 14, 2017, hearing on S. 1012 follows:

##### STATEMENT OF SCOTT CAMERON, ACTING ASSISTANT SECRETARY—WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Chairman Flake, Ranking Member King and members of the Subcommittee, I am Scott Cameron, Acting Assistant Secretary for Water and Science at the Department of the Interior. I am pleased to provide the views of the Department of the Interior (Department) on S. 1012, the New Mexico Drought Preparedness Act. This bill aims to enhance coordination for water acquisitions, authorize projects to assist with water conservation, authorize the study of the lower reaches of the Middle Rio Grande, support efforts to provide an annual spring peak flow for the Middle Rio Grande, and provide for a study of Rio Grande reservoirs. The Department supports many elements of the New Mexico Drought Preparedness Act of 2017, but has concerns with some of the new authorizations and with the language of Section 6 of the bill as detailed later in my statement.

Although this bill mentions the Upper, Middle, and Lower Rio Grande basins, as well as the Lower Pecos, Gila, Canadian, San Francisco and San Juan River basins, the primary focus is on work in the Middle Rio Grande in New Mexico. The 2016 biological opinion for water operations, river infrastructure restoration, maintenance, and

conservation activities in the Middle Rio Grande defines the Middle Rio Grande as the entire width of the 100-year floodplain of the Rio Grande basin and its tributaries from the Colorado/New Mexico state line to Elephant Butte Dam. The Bureau of Reclamation's (Reclamation) Middle Rio Grande Project (Project) extends from the Velarde area of northern New Mexico south to the backwaters of Elephant Butte Reservoir. The irrigation features of the Project divert water from the river to irrigate between 50,000 and 70,000 acres of irrigable land, including an approximate 20,000 acres of Pueblo Indian land.

Reclamation has been leasing water on the Pecos River and from San Juan-Chama Project contractors for over a decade to supplement river flows for endangered species, consistent with the language of Section 3 of S. 1012. Taxpayers have spent tens of millions of dollars acquiring San Juan-Chama Project water and relinquished Rio Grande Compact credit water in recent years to augment flows in the Middle Rio Grande. However, other than the relinquished Rio Grande Compact credit water, Reclamation has yet to lease and make use of more-than-nominal volumes of native Rio Grande water in New Mexico due to the administrative, legal, and institutional complexities involved. In the explanatory statement printed December 11, 2014, for the Congressional Record, in reference to P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, Congress encouraged Reclamation to pursue efforts to facilitate agricultural water leasing along the Middle Rio Grande and San Juan-Chama Projects. In response, Reclamation has started a pilot leasing program of pre-1907 water rights and is planning a grant opportunity to solicit the services of outside experts to build and begin testing the framework for a leasing program in collaboration with the Middle Rio Grande Conservancy District (District). This bill would provide Reclamation and the District with increased flexibility to implement and effectively manage such a program.

For years, Reclamation has provided funding and technical assistance for irrigation districts and water utilities in New Mexico and west Texas to develop sustainable water supplies under various water conservation programs. Examples of such assistance include improving efficiency and conservation under the WaterSMART Program through Water and Energy Efficiency Grants to entities such as the Elephant Butte Irrigation District and funding for the Albuquerque Bernalillo County Water Utility Authority's water recycling and reuse (Title XVI) project, and through the Native American Affairs Program. Reclamation is also working with partners to carry out various landscape-scale efforts through the Basin Study Program. Reclamation, the District, and fifteen other non-Federal partners, including Tribal partners, have been working on a plan of study for a Rio Grande—New Mexico Basin Study. In addition, the six Middle Rio Grande Pueblos participate in the Rio Grande Pueblos Irrigation Infrastruc-

ture Improvement Project. Reclamation also provided funding under the Cooperative Watershed Management Program to expand the Rio Chama Watershed Group in 2014 to include the lower Rio Chama Basin, and provided funding to the Upper Rio Grande Watershed District in 2016 to establish a watershed group to bring together ranchers, environmental interests, and land management agencies in the Espanola Basin. Reclamation has provided Drought Response Program funding in 2016 to the Middle Rio Grande Conservancy District for both drought contingency planning and implementation of a drought resiliency project to install a pumping facility to increase the predictability of water supplies for District water users. Any water conservation actions by the District and Pueblos that would result in more efficient use of the available water supply is welcomed by Reclamation. However, as indicated previously, existing programs are available to provide the opportunity to cost-share conservation actions that will benefit the Rio Grande system.

Section 5(a) of S. 1012 contains provisions granting five years of a temporary deviation in the operation of Cochiti Reservoir by the U.S. Army Corps of Engineers. Such deviations, if found to be hydrologically beneficial, allow for creation of a spike flow in the Middle Rio Grande through the impoundment and regulation of spring flows. However, in the past 67 years of record, conditions for deviation would only have occurred in five of those years. The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti and Santa Ana Pueblos are addressed. The ability to stage water in the spring to augment the native flows in the Middle Rio Grande is an important cue to the endangered Rio Grande silvery minnow to reproduce.

Section 5(b) of S. 1012 authorizes a comprehensive study and a series of projects in the Isleta and San Acacia reaches of the Middle Rio Grande aimed at giving Reclamation and other partnering agencies a better understanding of this area, which is designated as critical habitat for the Rio Grande silvery minnow. The Middle Rio Grande below Cochiti Dam is divided into four reaches defined by locations of mainstem irrigation diversion dams. The Cochiti Reach extends from Cochiti Dam to Angostura Diversion Dam. The reach from Angostura Diversion Dam to Isleta Diversion Dam is called the Albuquerque Reach. The Isleta Reach is bound upstream by Isleta Diversion Dam and downstream by San Acacia Diversion Dam. Finally, the reach below San Acacia Diversion Dam to the headwaters of Elephant Butte Reservoir is the San Acacia Reach. The study would also assist with development of a plan for moving forward with coordinated water conservation measures.

Reclamation and Department policy require scientific information considered in our decision making to be robust and of the best available quality. Stakeholders must be

able to trust the information. Section 6 of S. 1012 authorizes a National Academy of Sciences (NAS) Study of the water and reservoir management and operation from Heron and El Vado down to Abiquiu, Cochiti, and Jemez Canyon dams and reservoirs. A full evaluation of the legal authorities of each of these reservoirs weighed against the basin's hydrology would likely provide water managers all along the Rio Grande in New Mexico with useful information that could prove important as we struggle to meet growing needs with a decreasing water supply. A study of this magnitude, however, is not anticipated in Reclamation's budget, and would have to compete for funding against numerous existing priorities. Therefore, while we see the NAS study as the most comprehensive review of Reclamation operations, we recommend evaluation of ways that this project can build on the work of other studies, such as the proposed Rio Grande—New Mexico Basin Study, if it is selected for funding, and the Rio Chama Pilot Study, which is a review of river and reservoir operations on the Rio Chama. The Department would seek to secure cost-share partners for the review, consistent with the requirements for Basin Studies. This approach would achieve the study objectives outlined in S. 1012, allow for independent scientific input, and limit duplication of efforts and resources.

New Mexico has endured almost a decade of drought. An above average snowpack this spring will allow Reclamation and its stakeholders to start rebuilding storage in nearly empty reservoirs. Reclamation is currently in the process of leasing all of the water that is available at a reasonable price (i.e. excluding what would be covered under the pilot leasing program described above).

The Department generally supports language in Sections 8 and 9 of S. 1012 relating to the authorizations for the WaterSMART Program and under the Reclamation States Emergency Drought Relief Act. We note, however, that if the sponsor's aim is to reauthorize the Reclamation States Emergency Drought Relief Act, Title I of that Act (Section 104(c)) should also be reauthorized to mirror Title III. There are some technical changes we would suggest to ensure that the language can be implemented through Reclamation's existing programs (e.g., the Department supports retaining a required non-Federal cost share contribution which allows Reclamation to leverage Federal and non-Federal funding to construct projects with far more significant benefits than would otherwise be possible, in the WaterSMART Drought Response Program and other WaterSMART programs). We are willing to work with the sponsors and the Committee to refine those sections, and to ensure that the additional financial assistance authorities included in Section 7 do not duplicate other existing authorities. In addition, the legislation should ensure that any drought relief wells funded should be in response to a critical need and prioritization process, and do not add to existing problems associated with groundwater depletion.

Section 10 of S. 1012 provides additional time for completion of the study originally authorized under Section 9106 of the Omnibus Public Land Management Act of 2009 (P.L. 111–11). The purpose of the study is to assess the feasibility of projects to repair, rehabilitate, reconstruct, or replace Pueblo irrigation facilities recommended to be implemented from fiscal years 2010 through 2019. The study was to be submitted to Congress in March 2011; however, Reclamation was delayed in starting the study. Reclamation is currently scheduled to complete the study in 2017.

All 18 New Mexico Rio Grande Pueblos have agreed to participate in the project. Reclamation supports the language in S. 1012 to extend the study period until December 31, 2018, and extend the ten-year construction period through 2024. Funding for construction will be dependent on availability. Because not all projects can be built, Reclamation will prioritize the projects based on the cost-effectiveness of the proposed investments.

This concludes my statement. I am pleased to answer questions at the appropriate time.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1012, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

### OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

#### Public Law 111–11

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### TITLE IX—BUREAU OF RECLAMATION AUTHORIZATIONS

\* \* \* \* \*

#### Subtitle B—Project Authorizations

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#### SEC. 9106. RIO GRANDE PUEBLOS, NEW MEXICO.

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#### (c) IRRIGATION INFRASTRUCTURE STUDY.—

(1) STUDY.—(A) IN GENERAL.—On the date of enactment of this Act, the Secretary, in accordance with subparagraph (B), and in consultation with the Rio Grande Pueblos, shall—

- (i) conduct a study of Pueblo irrigation infrastructure; and
- (ii) based on the results of the study, develop a list of projects (including a cost estimate for each project), that are recommended to be implemented over a 10-year period to repair, rehabilitate, or reconstruct Pueblo irrigation infrastructure.

(B) REQUIRED CONSENT.—In carrying out subparagraph (A), the Secretary shall only include each individual Rio Grande Pueblo that notifies the Secretary that the Pueblo consents to participate in—

(i) the conduct of the study under subparagraph (A)(i); and

(ii) the development of the list of projects under subparagraph (A)(ii) with respect to the Pueblo.

(2) PRIORITY.—

(A) CONSIDERATION OF FACTORS.—

(i) IN GENERAL.—In developing the list of projects under paragraph (1)(A)(ii), the Secretary shall—

(I) consider each of the factors described in subparagraph (B); and

(II) prioritize the projects recommended for implementation based on—

(aa) a review of each of the factors; and

(bb) a consideration of the projected benefits of the project on completion of the project.

(ii) ELIGIBILITY OF PROJECTS.—A project is eligible to be considered and prioritized by the Secretary if the project addresses at least 1 factor described in subparagraph (B).

(B) FACTORS.—The factors referred to in subparagraph (A) are—

(i)(I) the extent of disrepair of the Pueblo irrigation infrastructure; and

(II) the effect of the disrepair on the ability of the applicable Rio Grande Pueblo to irrigate agricultural land using Pueblo irrigation infrastructure;

(ii) whether, and the extent that, the repair, rehabilitation, or reconstruction of the Pueblo irrigation infrastructure would provide an opportunity to conserve water;

(iii)(I) the economic and cultural impacts that the Pueblo irrigation infrastructure that is in disrepair has on the applicable Rio Grande Pueblo; and

(II) the economic and cultural benefits that the repair, rehabilitation, or reconstruction of the Pueblo irrigation infrastructure would have on the applicable Rio Grande Pueblo;

(iv) the opportunity to address water supply or environmental conflicts in the applicable river basin if the Pueblo irrigation infrastructure is repaired, rehabilitated, or reconstructed; and

(v) the overall benefits of the project to efficient water operations on the land of the applicable Rio Grande Pueblo.

(3) CONSULTATION.—In developing the list of projects under paragraph (1)(A)(ii), the Secretary shall consult with the Director of the Bureau of Indian Affairs (including the designated engineer with respect to each proposed project that affects the Six Middle Rio Grande Pueblos), the Chief of the Natural Resources Conservation Service, and the Chief of Engineers to evaluate the extent to which programs under the jurisdiction of the respective agencies may be used—

- (A) to assist in evaluating projects to repair, rehabilitate, or reconstruct Pueblo irrigation infrastructure; and
- (B) to implement—
  - (i) a project recommended for implementation under paragraph (1)(A)(ii); or
  - (ii) any other related project (including on-farm improvements) that may be appropriately coordinated with the repair, rehabilitation, or reconstruction of Pueblo irrigation infrastructure to improve the efficient use of water in the Rio Grande Basin.
- (4) REPORT.—Not later than [2 years after the date of enactment of this Act] *December 31, 2019*, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that includes—
  - (A) the list of projects recommended for implementation under paragraph (1)(A)(ii); and
  - (B) any findings of the Secretary with respect to—
    - (i) the study conducted under paragraph (1)(A)(i);
    - (ii) the consideration of the factors under paragraph (2)(B); and
    - (iii) the consultations under paragraph (3).
- (5) PERIODIC REVIEW.—Not later than 4 years after the date on which the Secretary submits the report under paragraph (4) and every 4 years thereafter, the Secretary, in consultation with each Rio Grande Pueblo, shall—
  - (A) review the report submitted under paragraph (4); and
  - (B) update the list of projects described in paragraph (4)(A) in accordance with each factor described in paragraph (2)(B), as the Secretary determines to be appropriate.

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(g) AUTHORIZATION OF APPROPRIATIONS.—

- (1) STUDY.—There is authorized to be appropriated to carry out subsection (c) \$4,000,000.
- (2) PROJECTS.—There is authorized to be appropriated to carry out subsection (d) \$6,000,000 for each of fiscal years [2010 through 2019] *2018 through 2026*.

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## Subtitle F—Secure Water

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### SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

- (a) AUTHORIZATION OF GRANTS AND COOPERATIVE AGREEMENTS.—
  - (1) AUTHORITY OF SECRETARY.—The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement—
    - (A) to conserve water;
    - (B) to increase water use efficiency;
    - (C) to facilitate water markets;



(D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;

(E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;

(F) to prevent the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);

(G) to accelerate the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under which the Commissioner of Reclamation has implementation responsibilities; or

(H) to carry out any other activity—

(i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change; **[or]**

(ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area; *or* **[.]**

(iii) *to plan for or address the impacts of drought.*

(2) APPLICATION.—To be eligible to receive a grant, or enter into an agreement with the Secretary under paragraph (1), an eligible applicant shall—

(A) be located within the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391); and

(B) submit to the Secretary an application that includes a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant.

(3) REQUIREMENTS OF GRANTS AND COOPERATIVE AGREEMENTS.—

(A) COMPLIANCE WITH REQUIREMENTS.—Each grant and agreement entered into by the Secretary with any eligible applicant under paragraph (1) shall be in compliance with each requirement described in subparagraphs (B) through (F).

(B) AGRICULTURAL OPERATIONS.—In carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

(i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or

(ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

(C) NONREIMBURSABLE FUNDS.—Any funds provided by the Secretary to an eligible applicant through a grant or agreement under paragraph (1) shall be nonreimbursable.

(D) TITLE TO IMPROVEMENTS.—If an infrastructure improvement to a federally owned facility is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1), the Federal Government shall continue to hold title to the facility and improvements to the facility.

(E) COST SHARING.—

(i) FEDERAL SHARE.—The Federal share of the cost of any infrastructure improvement or activity that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall not exceed 50 percent of the cost of the infrastructure improvement or activity.

(ii) CALCULATION OF NON-FEDERAL SHARE.—In calculating the non-Federal share of the cost of an infrastructure improvement or activity proposed by an eligible applicant through an application submitted by the eligible applicant under paragraph (2), the Secretary shall—

(I) consider the value of any in-kind services that substantially contributes toward the completion of the improvement or activity, as determined by the Secretary; and

(II) not consider any other amount that the eligible applicant receives from a Federal agency.

(iii) MAXIMUM AMOUNT.—The amount provided to an eligible applicant through a grant or other agreement under paragraph (1) shall be not more than \$5,000,000.

(iv) OPERATION AND MAINTENANCE COSTS.—The non-Federal share of the cost of operating and maintaining any infrastructure improvement that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall be 100 percent.

(F) LIABILITY.—

(i) IN GENERAL.—Except as provided under chapter 171 of title 28, United States Code (commonly known as the ‘Federal Tort Claims Act’), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this section, the title of which is not held by the United States.

(ii) TORT CLAIMS ACT.—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

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